

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF ORANGE

2020 JUN 12 P 2:51

SUPERIOR COURT DIVISION

FILE NO.: 20 CVS 635

CECIL STATON,

ORANGE CO., C.S.C.

BY aa)

Plaintiff,

v.

COMPLAINT

THE UNIVERSITY OF NORTH
CAROLINA; HARRY SMITH, in his official
capacity as a member of the University of
North Carolina Board of Governors, and in
his individual capacity; PETER ROMARY;
and QVERITY,

Defendants.

Plaintiff, complaining of defendants, alleges and states the following:

ACTION

1. Plaintiff, who built a career as a visionary leader in academia, business, and state government—who dedicated much of his professional life to public service—institutes this action to recover significant damages borne from the gratuitous destruction of his professional reputation and career in higher education administration.

2. That decades-long career was the casualty of a long-running irrational and obsessive vendetta, held by Harry Smith, a former member of the University of North Carolina Board of Governors who, in a flagrant abuse of his power and the public trust, on his own and through his agents, waged a callous misinformation campaign against plaintiff, condoned and ratified by The University of North Carolina system leadership. The vendetta arose when plaintiff rejected an unethical business proposal, tendered by Smith and in conflict with his position on the Board, shortly following plaintiff's unanimous selection as Chancellor of East Carolina University by defendant The University of North Carolina.

3. That campaign trailed plaintiff from his resignation at East Carolina University, culminating in the malicious and deliberate dissemination of misinformation to the broader higher education community, driving plaintiff from his chosen field, and depriving the academic community of a singular and visionary force.

4. Plaintiff seeks the full array of compensatory damages, and punitive damages to

compensate plaintiff for his losses, to punish defendants' acts, and to deter future abuses of the public trust and the illicit wielding of government-sponsored power.

PARTIES

5. The plaintiff, Cecil Staton, is a resident of the State of Georgia. At times pertinent to this action, plaintiff was the Chancellor of East Carolina University (ECU), a constituent institution of the University of North Carolina ("UNC"), as established in N.C.G.S. § 116-4.

6. The defendant, The University of North Carolina (UNC), is an institution of higher education, established and operated pursuant to N.C.G.S. § 116-1, *et seq.* The UNC Board of Governors (the UNC-BOG) is empowered to establish policy; the President of UNC is responsible for carrying out the policies of the UNC-BOG and for the overall administration of the system, including personnel management. At times pertinent to this action, the President of the UNC system was Margaret Spellings, followed by Interim President Dr. William Roper ("Dr. Roper").

7. The defendant, Harry Smith, is, upon information and belief, a resident of Pitt County, North Carolina. At all times pertinent to plaintiff's employment with ECU, defendant Smith was a member of the UNC-BOG, and during the last eleven (11) months of plaintiff's employment, was the Chair of the UNC-BOG. Defendant Smith is sued in his official capacity as a member of the UNC-BOG, and in his individual capacity.

8. The defendant, Peter Romary, is, upon information and belief, a resident of Orange County, North Carolina. Upon information and belief, defendant Romary is a partner of the defendant QVerity. Upon information and belief, at times pertinent to this action, defendant Romary was acting in his individual capacity; and at other times, upon information and belief, Romary was acting within the course of and scope of his partnership, employment and management of defendant QVerity; and, upon information and belief, in his capacity as an agent of defendant Smith and other governors of the UNC-BOG.

9. The defendant, QVerity, is a partnership existing under the laws of and doing business in the State of North Carolina, which holds itself out to the public as a provider of investigative services. At all times pertinent to this action, defendant QVerity was owned, managed and operated by defendant Romary and other partners; and, upon information and belief, acted in its capacity as an agent of defendant Smith. Accordingly, to the extent defendant Romary was acting in the ordinary course of business, or with the authority of the partnership of defendant QVerity in the acts complained of hereafter, defendant QVerity is liable for the acts and misconduct of defendant Romary.

BACKGROUND

10. On or about July 1, 2016, plaintiff was initially employed by UNC as Chancellor of ECU.

11. Plaintiff was selected from a field of dozens of applicants by a selection committee, whose recommendation was presented to President Spellings. Based on President Spellings'

recommendation, in addition to that of the selection committee, the UNC- BOG selected plaintiff as Chancellor of ECU and entered into an employment agreement with plaintiff.

12. The selection of plaintiff as Chancellor of ECU was based on an extensive search, full consideration of plaintiff's excellent qualifications and credentials in academics, politics and business, consideration of plaintiff's character, competence and integrity, and supplemented with a thorough background check and a vetting of references.

13. The appointment of plaintiff as Chancellor was approved unanimously by the UNC-BOG, including defendant Smith.

14. Plaintiff's professional background includes numerous successes in business, higher education, higher education administration, and politics.

PLAINTIFF'S SERVICE AS CHANCELLOR OF ECU

15. Plaintiff served as Chancellor of ECU from July 1, 2016, to June 30, 2019.

16. Throughout his tenure as Chancellor, and particularly at the time of plaintiff's initial employment, ECU presented formidable obstacles and issues which required focused action to ensure ECU's continued vitality for the future. Such obstacles and issues included lower student enrollment, urgent needs for facilities renovation and maintenance, continuing problems in the athletic department, a lack of funding for medical education, and insufficient state support for the academic enterprise.

17. Plaintiff confronted these challenges, working closely with ECU's Board of Trustees (the ECU-BOT), its governing body.

18. Plaintiff's performance of his duties during his first year as Chancellor of ECU, the 2016-2017 academic year, was excellent, leading ECU to achieve many of its goals, including the following:

- The launch of a \$500 million comprehensive fundraising campaign, more than \$230 million of which was raised or committed during plaintiff's tenure at ECU;
- The searches for multiple senior level administrators was successfully completed;
- The initiation of a new marketing campaign for ECU as plaintiff "challenged" ECU to become "America's next great national University;"
- Enrollment reached an all-time record by the fall of 2017, exceeding 29,000 students;
- A plan for a \$60 million renovation of the football stadium was advanced, including commitments of more than \$30 million in gifts and premium seat sales;
- An initiative that led to enrollment in the Honors College doubling beginning with the 2017 fall class.
- The successful launch of an initiative with a goal of increasing research activity by 50 percent over five years;

- The successful launch of an initiative with a goal of increasing campus internationalization including doubling the number of students participating in education abroad over five years; and
- The successful adoption of ECU’s Strategic Plan Extension for 2017—2022, named *Capture Your Horizon*.

19. Following his first full year, plaintiff earned the unanimous support of the ECU-BOT documented by the trustees’ adoption of a resolution on July 28, 2017, which celebrated the achievements by ECU “of many significant goals and accomplishments over the past year,” and recognizing “the valuable insights, direction and leadership that has been provided by Cecil P. Staton” in his first year as Chancellor.

20. During the years that followed, plaintiff’s exemplary leadership continued, as he built upon the progress he had set in motion, including the following:

- Providing leadership for numerous capital projects, including \$70 million in dormitory renovations, a \$60 million southside stadium renovation, opening a new \$37 million student center on the health sciences campus in 2017, opening a new \$122 million student union on the main campus in January 2019, preparing for the construction of a new \$8 million innovation hub and collision space for the Miller School of Entrepreneurship and a \$95 million life sciences building, due to be completed in 2021;
- Leading successful searches for numerous Vice Chancellor positions, as well as athletic positions, including Athletic Director, head coaches for women’s and men’s basketball and head football coach;
- Launching the Rural Prosperity Initiative, a new university enterprise partnering with North Carolina-based multi-national technology company SAS Institute Inc. focusing upon healthcare, education, and economic disparities in rural North Carolina (<https://rede.ecu.edu/rural-prosperity/>);
- Launching an initiative to increase enrollment at the Brody School of Medicine and to build a new \$215 million medical education facility;
- Launching the ECU Lab (Laboratory) School in partnership with Pitt County Schools, focusing on the integration of health, wellness, and learning; and
- Leading preparations for creating ECU’s 13th college, the College of Rural Public Health, in 2021.

21. On July 25, 2018, the ECU-BOT again expressed its unanimous support for plaintiff, citing his bold leadership, vision and direction, and stating that ECU “is on a positive trajectory and is taking a huge step forward in fulfilling its mission to the state of North Carolina.”

22. In a January 8, 2019, letter signed by 130 ECU alumni and prominent supporters, plaintiff was yet again praised for his service to ECU and his resulting accomplishments.

23. Throughout his tenure, the evidence overwhelmingly supports the periodic public statements by the ECU community, as described above, that plaintiff consistently provided exemplary leadership, vision, and sound direction to growing ECU into a better institution.

INTERFERENCE WITH PLAINTIFF'S GOVERNANCE OF ECU BY DEFENDANTS

24. In or about 2013, defendant Smith, an alumnus of ECU, was appointed to the UNC-BOG by influential legislators in the North Carolina General Assembly, to whose campaigns defendant Smith had made substantial contributions over the years, and for whom he had served as a successful fundraiser.

25. Defendant Smith, who had no academic experience—and who had boasted in an interview prior to his appointment that he did not even know who or what the Board of Governors was—was unqualified for appointment to the UNC-BOG.

26. Defendant Smith was appointed to the UNC-BOG for no reason other than he had contributed to and raised substantial funds for the political campaigns of top legislators in the North Carolina General Assembly.

27. In or about September, 2016, shortly after plaintiff was hired as Chancellor of ECU, defendant Smith presented an unethical financial scheme, requesting plaintiff, on behalf of ECU, to guarantee a master lease of hundreds of beds within an apartment complex in Greenville, known as North Campus Crossing (the “North Campus Crossing Scheme”). In return, defendant Smith proposed to buy them in receivership at a historically low price. Defendant Smith further requested that sophomores be required to live in the apartments, which were approximately four miles from campus.

28. Defendant Smith represented to plaintiff, as well as three trustees on the ECU-BOT, that he had “clearance” from the UNC Office of Legal Counsel concerning the North Campus Crossing Scheme. Defendant Smith’s statement was untrue, and consequently, was rejected and denied by UNC given the ethical and legal issues surrounding the scheme.

29. Upon information and belief, defendant Smith exerted pressure on one or more other UNC institutions to further his personal financial interests.

30. Aside from defendant Smith’s clear conflicts, the North Campus Crossing Scheme was not in the best interest of ECU students or in the financial interests of ECU, given its distance from campus, the abundance of housing closer to campus, the financial considerations that enriched defendant Smith, and the competitive disadvantage inherent in requiring sophomores to live in campus housing.

31. In the exercise of his professional judgment, in the interest of ECU and its students, and in consideration of the blatant conflict of interest and impropriety of Smith—a member of the

UNC-BOG, seeking to receive financial benefits from the North Campus Crossing Scheme—plaintiff rejected Smith’s proposal.

32. As a result of plaintiff’s rejection of the North Campus Crossing Scheme, defendant Smith commenced a course of harassment of plaintiff, including—for the first time—criticizing plaintiff both privately and publicly, questioning his selection as Chancellor, and his competence and qualifications for the job, despite defendant Smith’s own participation in the search process and vote in favor of plaintiff just a few months prior.

33. Specifically, as a result of plaintiff’s rejection of the North Campus Crossing Scheme, defendant Smith retaliated against plaintiff’s leadership of ECU by:

- a. pressuring ECU to fire its CFO, who had also rejected the North Campus Crossing Scheme;
- b. rescinding a \$1 million pledge to ECU’s football stadium renovation that he had previously offered;
- c. vocally opposing ECU’s Project Unify, a plan to unify ECU’s physician practice plan with that of Vita Medical System in Greenville, which he had previously supported;
- d. preventing an increase in plaintiff’s compensation commensurate with his performance and position that was recommended by President Spellings;
- e. interfering with ECU hiring decisions; and
- f. publicly criticizing plaintiff’s leadership and injecting himself into management issues in violation of the UNC-BOG protocol, policy and practice.

34. Defendant Smith’s course of conduct, and his construction of a false narrative through distorting and misrepresenting events from plaintiff’s past—innocuous events and facts that had been thoroughly reviewed throughout the UNC-BOG’s deliberations and before its unanimous vote for selection of plaintiff—became an obsession for him as he attempted to undermine plaintiff both in the ECU community and within the UNC-BOG.

35. Defendant Smith’s actions were driven by personal animosity and by plaintiff’s rejection of the North Campus Crossing Scheme, and were unaffected by plaintiff’s exemplary performance as Chancellor.

36. Defendant Smith’s baseless and relentless targeting of plaintiff was to the detriment of ECU students, faculty, staff, alumni, and UNC. Further, the targeted campaign was contrary to Smith’s duties and obligations as a member of the UNC-BOG.

37. Upon information and belief, defendant UNC never undertook any action to dissuade or prevent defendant Smith's deliberate course of conduct against plaintiff, despite their respective positions and obligations to prevent harm to UNC.

38. As a direct and proximate result of defendant Smith's efforts to undermine plaintiff, in November and December, 2016, President Spellings was aware that members of the UNC-BOG were concerned about the persistent attacks on plaintiff by defendant Smith, and the potential effects on plaintiff's ability to maintain support despite his excellent record.

39. In 2017, defendant Smith persisted in his relentless campaign against plaintiff, much of it waged underground, which was designed to undermine his support and drive him from office despite plaintiff's ongoing excellence in the role.

40. The culmination of defendant Smith's campaign against plaintiff as Chancellor of ECU was the production of a lengthy and scathing written attack on plaintiff and his administration, entitled "Was the Hire of ECU Chancellor Cecil Staton an Act of Gross Negligence?" (hereafter "Dossier").

41. The Dossier, in furthering defendant Smith's false narrative surrounding plaintiff, included numerous lies, misrepresentations and distortions, perpetuated by defendants by:

- a. making false representations about plaintiff's experience in business and higher education;
- b. maligning plaintiff's personal and professional background;
- c. making false representations regarding plaintiff's salary at ECU and false representations regarding plaintiff's characterization of his prior compensation;
- d. falsely alleging that plaintiff engaged in a quid pro quo scheme to be appointed as Chancellor of ECU; and
- e. accusing plaintiff of questionable ethical integrity.

42. The Dossier was, upon information and belief, prepared, published and disseminated by defendant Smith, and/or through the combined efforts of defendants Smith and Romary.

43. Defendant QVerity, on its website, boasts of its staff of "former U.S. intelligence officers who are recognized worldwide...in information-collection methodologies." The firm also advertises itself as a "widely recognized leader in the field of personnel screening and vetting."

44. Defendant Romary's professional activities, through defendant QVerity, include a focus on investigating the credentials of candidates for senior leadership within higher education.

45. Upon information and belief, defendant Romary was hired by and acted as an agent for defendant Smith at various times between 2016 and November, 2019 in order to investigate and attack defendant Smith's perceived enemies within UNC.

46. Additionally, upon information and belief, at relevant times to this action, defendant Romary acted as an agent for other UNC-BOG members to investigate candidates and open positions for other constituent institutions of UNC.

47. During the above time period, defendant Romary and defendant QVerity compiled information on plaintiff and provided it to defendant Smith.

48. Upon information and belief, defendants Romary and QVerity were aware that defendant Smith sought information on plaintiff in order to interfere with his role as Chancellor of ECU.

49. Upon information and belief, it is a pattern and practice of defendants Smith, Romary and QVerity to use anonymous communications to interfere with individuals associated with ECU for the purpose of damaging their reputations and employment relationships.

50. Specifically, and by way of example, upon information and belief, in or about 2015 or 2016, defendant Romary prepared and published an anonymous attack on the individual who was selected as ECU Director of Alumni Affairs when defendant Romary's spouse was a candidate for the same position.

51. Additionally, in or about 2019, upon information and belief, defendant Romary, writing under the pseudonym of John Q. Public, and from the email address of johnqpublicecu@gmail.com, made allegations against Dr. Virginia Hardy, the person responsible for ending defendant Romary's employment with ECU, in order to undermine her possible selection as Interim Chancellor.

52. Additionally, in or about 2019, upon information and belief, defendant Romary, writing under the pseudonym of John Q. Public and from the email address of johnqpublicecu@gmail.com, wrote Dr. Roper and the ECU-BOT regarding Dan Gerlach's fitness as Interim Chancellor.

53. Upon information and belief, defendant Romary, writing under the pseudonym of John Q. Public and from the email address of johnqpublicecu@gmail.com, contacted UNC President Roper and defendant Smith on March 27, 2019, defaming plaintiff with unfounded allegations following plaintiff's announcement of his resignation as ECU Chancellor.

54. Upon information and belief, defendant Smith prepared and published or directed defendants Romary and QVerity to prepare and publish the Dossier and various other anonymous false communications defaming plaintiff during the time plaintiff was Chancellor at ECU.

55. While most of the allegations in the Dossier are untrue or distorted, the publicity from its publication was extremely damaging to plaintiff and his leadership of ECU.

56. Upon information and belief, defendant UNC did not investigate the publication of the Dossier or take any significant steps to defend plaintiff from the attack, despite their responsibilities to protect UNC and its employees from harm.

57. Despite the false allegations, around the same time the Dossier was being drafted, the ECU-BOT expressed unanimous support for plaintiff and his leadership, given his stellar track record as Chancellor.

58. Nevertheless, on or about November 17, 2017, President Spellings—after apologizing to plaintiff for the attacks amidst his numerous successes—advised plaintiff to provide a written rebuttal of the Dossier.

59. Around the same time, despite defendant Smith's actions and ongoing campaign against plaintiff, defendant UNC ratified defendant Smith's ascendance to vice-chair of the UNC-BOG.

60. Following President Spelling's advice, and in response to the baseless and malicious attacks by defendant Smith, plaintiff retained an attorney, at his own expense, who prepared a response to the Dossier in an effort to defend plaintiff's reputation in the UNC academic community at-large, and his leadership of ECU, in particular.

61. Defendant Smith's course of conduct was based on personal animosity ignored plaintiff's numerous accomplishments as Chancellor, and imposed a the significant detriment not only to plaintiff, but to the wider ECU and UNC community.

62. Over the months that followed, defendant Smith continued his course of conduct, and relentlessly attempted to undermine plaintiff within the UNC-BOG and ECU, and defendant UNC, upon information and belief, did nothing to stop it.

63. Further, despite the North Campus Crossing Scheme and defendant Smith's misrepresentations regarding having "clearance" from UNC, despite his attacks on plaintiff, and despite the pressure on President Spellings and threats to her employment, defendant UNC explicitly and/or implicitly ratified defendant Smith's behavior and failed to take any steps to stop the campaign or to publish accurate information about the plaintiff. Defendant Smith continued on the UNC-BOG, without accountability for the misinformation campaign, and became Chair of the UNC-BOG on July 1, 2018.

64. Shortly thereafter, President Spellings informed plaintiff that she was under enormous pressure from defendant Smith to fire plaintiff and had even been informed that her own employment was in jeopardy if she refused to do so; and that she was concerned that defendant Smith might propose to have the UNC-BOG fire plaintiff, although it was generally the responsibility of the UNC president to initiate such decisions. Nevertheless, defendant UNC continued to abdicate any responsibly for defendant Smith's actions, failing to take any action to contain defendant Smith and curtail the campaign against plaintiff and the resulting harm defendant Smith continued to inflict upon UNC.

65. In or about July 2018, a UNC-BOG member confronted defendant Smith when the UNC-BOG member learned that defendant Smith had instructed President Spellings to terminate plaintiff's employment. The UNC-BOG member stated that there were no grounds justifying the termination of plaintiff.

66. Also in July 2018, defendant Smith sought to create a false narrative that the ECU-BOT and its chairman had lost confidence in plaintiff and believed his employment should be terminated, which was wholly untrue.

67. Subsequently, later in July, 2018, defendant Smith attempted to bring plaintiff's employment as Chancellor to a vote within the UNC-BOG. Facing resistance from President Spellings, who was aware that plaintiff's excellent performance made such action unjustifiable, defendant Smith induced President Spellings to require plaintiff to undergo a 360 evaluation and to conduct audits relative to plaintiff's salary, based on issues raised in the Dossier.

68. As alleged above, during the same time period, on July 25, 2018, the ECU-BOT expressed its strong support for plaintiff through a formal letter to President Spellings.

69. Given the indisputable facts establishing plaintiff's excellent performance, and particularly the support of his local governing body, the ECU-BOT, there were no legitimate grounds for defendant Smith's actions threatening plaintiff's employment as Chancellor of ECU.

70. Defendant Smith's actions towards plaintiff stemmed from personal animosity, and were retaliation for plaintiff's rejection of defendant Smith's unethical North Campus Crossing Scheme. In taking those actions, defendant Smith violated his ethical and professional obligations to ECU and UNC.

71. Additionally, the requirement of a 360 evaluation of a Chancellor after two years on the job was unprecedented, and inconsistent with the policies and practices of defendant UNC.

72. Nevertheless, defendant UNC hired an independent and objective professional firm to conduct an evaluation during the fall of 2018.

73. The firm reviewed information and documents concerning plaintiff and his administration, and interviewed plaintiff and numerous individuals, including members of the ECU-BOT and the UNC-BOG; the ECU-BOT Evaluation Committee; the ECU-BOT Chairperson; the ECU-BOT Chairperson; faculty and staff members and leaders; Vice Chancellor and other direct reports to the Chancellor; academic deans; mid-level administrative manager; community leaders; student leaders; alumni and Board of Visitors members and leaders; Department chairs; and foundation board members and leaders.

74. On November 6, 2018, the 360 evaluation was completed and the external consultant who had conducted the 360 review, Dr. Wayne D. Andrews, filed his Final Report of the evaluation, and provided a copy to plaintiff. In his summary, the consultant observed that "Chancellor Staton

is viewed by the majority of participants in the evaluation as a visionary leader who is fully engaged, hard-working and dedicated to ECU;” and concluded:

Twenty-seven months into his tenure as Chancellor of East Carolina University, Chancellor Staton is perceived as a visionary leader that is hard-working and strategically focused. He and his wife, Catherine, have worked very hard at becoming engaged members of the community. To be sure, there are issues that need to be resolved. Some of the issues he inherited and some have been complicated by his actions. Nonetheless, Chancellor Staton has garnered widespread support among the majority of key stakeholders.

75. Enduring relentless attacks by defendant Smith and others, plaintiff defended his performance in the media stating the fact that he had received an excellent evaluation by a neutral and objective firm in his 360 evaluation. Plaintiff was forced to respond given the failure of UNC to do so, and the failure of UNC to provide accurate information regarding plaintiff’s excellent leadership in response to defendant Smith’s attacks.

76. President Spellings, upon information and belief, under intense pressure from defendant Smith, sent a personal letter to plaintiff, dated November 18, 2018, (“Spellings Letter”) falsely claiming that plaintiff had violated UNC policies by orally disclosing the positive results of the 360 evaluation, and the conclusions of the objective professional evaluators; and inaccurately characterizing the results of the evaluation as “mixed.” The Spellings Letter constituted a confidential personnel document protected by North Carolina General Statute § 126-22(a).

77. As alleged above, during the summer and fall of 2018, President Spellings was facing continuing threats to her own employment from defendant Smith and others.

78. In or about October 2018, as a direct result of the pressure she was receiving from defendant Smith to leave UNC, President Spellings decided to resign from her position, effective March 1, 2019.

79. Thereafter, Dr. Roper was named interim President of UNC to take office after President Spellings’ resignation.

80. Plaintiff, experiencing extreme and severe stress from the constant harassment of defendant Smith, both publicly and privately, announced on March 15, 2019, that he had agreed to resign as Chancellor of ECU, effective June 30, 2019.

81. On March 15, 2019, plaintiff and defendant UNC executed a Separation Agreement and Release that contained, among other things, a mutual non-disparagement provision and an acknowledgement UNC’s obligation to maintain plaintiff’s personnel documents as confidential.

82. On or about March 18, 2019, after plaintiff’s announcement, a member of the UNC-BOG described plaintiff’s resignation as:

one of the saddest and most unfortunate chapters in the history of North Carolina higher education. Chancellor Staton has the strong support of his trustees and university community, received a positive job evaluation in the last six months and has done nothing to warrant termination of his service. I came to know him well as the Board of Governors liaison to ECU. Cecil Staton is a good man and great leader.

83. The UNC-BOG member attributed the decision of UNC Interim President, Dr. Roper, to accept plaintiff's resignation as "an effort to end the long-running campaign of false accusations and irrational attacks by Harry Smith, the chairman of the UNC Board of Governors," and elaborated:

Specifically, Dr. Roper acted to satisfy Harry Smith's irrational personal vendetta against the Chancellor. Harry Smith has been seeking the Chancellor's removal ever since Chancellor Staton and his trustees rejected in 2016 Mr. Smith's proposal to buy an apartment complex near ECU if the University would change its housing policy. Since that time, he has become obsessed with removing the Chancellor. President Margaret Spellings told me months ago that in virtually every conversation she had with Harry Smith he turned the conversation eventually to ECU and his criticism of the school's leaders. I and other members of the Board of Governors had a similar experience.

84. Subsequently, in or about April, 2019, the Spellings Letter, protected as a confidential personnel file under North Carolina law, was unlawfully disclosed by defendants to a reporter for *Business North Carolina* magazine, who subsequently published a portion within an article posted April 29, 2019, entitled "ECU juggles financial struggles, football woes, departing chief," and publicly releasing its inaccurate statement that distorted the results of the 360 evaluation, without providing the positive evaluation itself.

85. The pressured resignation of plaintiff was the direct result of the long-running vindictive misinformation campaign of defendants Smith and Romary, and the ratification of that conduct by defendant UNC.

PLAINTIFF'S EFFORTS TO SEEK COMPARABLE POSITIONS IN HIGHER EDUCATION FOLLOWING HIS RESIGNATION AS CHANCELLOR OF ECU

86. Following his agreement to resign, plaintiff was committed to remaining in higher education administration until his retirement, and began seeking a comparable position elsewhere.

87. Specifically, on or about April 15, 2019, plaintiff applied for a position as President of Steven F. Austin State University (SFASU), a public university in Texas.

88. On or about May 29, 2019, plaintiff was invited to interview with the Search Committee of SFASU.

89. Plaintiff was enthusiastic about the position, and accepted the invitation. Plaintiff planned to travel to SFASU on or about June 27, 2019, to interview for the position. Prior to the interview, plaintiff was informed by the Search Consultant for SFASU that he was a top candidate for the position based on his excellent background.

90. However, following a successful interview with the search committee, the Search Consultant of SFASU called plaintiff and reported that each member of the Search Committee had received a memorandum, dated June 12, 2019 (“Memorandum”), from the “UNC System Board of Governor [sic]” raising issues as to plaintiff’s integrity and competence as Chancellor of ECU. The Search Consultant informed plaintiff that as a direct result of the Memorandum, the Search Committee of SFASU had requested that plaintiff withdraw his name from consideration, and under the circumstances, plaintiff did so.

91. The Memorandum was addressed to the “S. F. A. S. U. Board of Regents” regarding “Cecil Stanton [sic] Former ECU (UNC System) Chancellor.” The Memorandum is attached as Exhibit A, and incorporated herein.

92. The UNC-BOG, through its author-member, stated in the opening paragraph that:

- a. he had “personally been involved in several [searches in selecting President] here in the University of North Carolina System;”
- b. “Mr. Cecil Stanton” [sic] “called me last week and asked if he could use me as a regent reference for several positions of leadership he was seeking across the country;” which statement was false;
- c. “his wife had no interest in moving to ‘Nowhere Texas’ and he had promised her it would only be for a short period until they could return to their home state of Georgia,” which was false;
- d. he “personally liked Cecil during his days at ECU and convinced myself he was doing a good job,” but “after his resignation/departure and the uncovering of financial activities, I realized he really has left things in poor condition,” and listed “a few items of concern that led to his dismissal (BTW-he was asked to resign by all but one of our Board of Governor’s [sic]),” which statement was false.

93. As alleged above, the above statements in the opening paragraph of the Memorandum, particularly those provided in ¶ 92 b-d, are blatantly false. Plaintiff did not contact any member of the UNC-BOG or within the UNC administration to provide a reference for the SFASU position or any other position; plaintiff was interested in the position and made no statement to the contrary, and did not malign SFASU or its location in Texas; ECU was in good condition financially and otherwise when plaintiff left his position, and he was never asked to resign by the UNC-BOG.

94. In the bullets that followed, the UNC-BOG, through its the author-member[s], stated:

- a. that the “faculty was positioning for a vote of no-confidence in Cecil that would have occurred before the winter break,” which statement was false;
- b. that for that reason UNC settled on a “severance package that exceeded \$875,000,” which statement was false;
- c. that plaintiff “mishandl[ed] ... the ECU budget and athletic fund,” that “after his second year as chancellor, ECU had a negative operating budget of over \$64 million and asked the state for additional funds to bail them out,” which statements were false;
- d. that “ECU lost enrollment during both years of [plaintiff’s] leadership – leading to a loss of tuition revenue and the expenses increases,” which statement was false;
- e. that the funds from “the consulting [sic] that helped place Cecil returned the money after a public outcry of his hiring,” that he was “never a good fit because he is not an educator,” that he “is a smooth talking politician” who “had connections with the System President Spellings,” which statements were false or distorted;
- f. that “the UNC system lost a legal suit from a student in which Cecil illegally censored a young woman from any and all ECU social media sites,” and that the “the lawsuit ultimately cost the UNC system over \$500,000,” which statement was false;
- g. that “the purchase of a \$1.65 million Chancellor’s house” “was a crucial blow with faculty/staff confidence in him as a prudent budget manager,” which statement was false;
- h. that “Cecil ... did not and does not have the background to run a higher education institution,” and “made many missteps in hiring and firing during his two years...,” which statements were false; and
- i. that he “did not involve himself in the community and was consistently searching for his next big role...,” and that “I often spoke to him about this but it never seemed to resonate,” which statements were false.

95. The UNC-BOG, through its author-member[s] concluded the Memorandum with the statement: “We mutually signed a separation agreement with Cecil that does not allow either party to publicly disparage the other, so I must maintain confidentiality. ... I simply felt obligated to share this information with you and wish you much success in hiring your next president....”

96. The Memorandum further attached the Dossier, which was also sent to all members of the SFASU search committee. A copy of the Dossier (without attachments) is attached as Exhibit B and incorporated herein.

97. Following the publication of the defamatory Memorandum and Dossier, plaintiff, through counsel, notified UNC of the above facts and provided a copy of the Memorandum. Plaintiff requested an immediate investigation to determine the specific source of the Memorandum, and to take action against the UNC-BOG to prevent any further destruction to plaintiff's reputation and damage to plaintiff's professional opportunities in higher education administration. Defendant UNC never responded substantively and has repeatedly failed to provide any documentation or specific information concerning any investigation.

98. Upon information and belief, defendant UNC never initiated an effective investigation into the misinformation disseminated in both the Memorandum and Dossier that were published by its Board of Governors and agents.

99. As a direct and proximate result of the Memorandum, plaintiff lost the opportunity to be considered for the position as President of SFASU.

100. The Memorandum was, upon information and belief, prepared, published and disseminated by defendants Smith and/or defendant Romary.

101. Upon information and belief, the Memorandum was authored and approved, as reflected therein, by the UNC- BOG and defendant Smith in both his official and individual capacities.

102. Defendant Smith, still empowered by UNC, remained bitter towards plaintiff following his departure from ECU.

103. Upon information and belief, defendants Smith, Romary, and/or other members of the UNC-BOG were responsible for other communications to institutions of higher education to which plaintiff had applied.

104. The communications, both specifically to SFASU and upon information and belief, to other institutions of higher education, were violations of the non-disparagement provision contained in the Separation Agreement and Release by defendant UNC and defendant Smith in his official capacity.

105. As a result of defendants' actions, plaintiff has been deprived of the opportunity to continue to be employed in higher education.

**DEFENDANT SMITH RESIGNS FROM THE UNIVERSITY OF NORTH
CAROLINA BOARD OF GOVERNORS**

106. On November 4, 2019, defendant Smith, upon information and belief, finally under pressure by fellow members of the UNC-BOG and UNC leadership, because of his unethical practices and misconduct, resigned from the Board of Governors, effective February 1, 2020.

CLAIMS FOR RELIEF

Pursuant to Rule 8 of the North Carolina Rules of civil Procedure, the plaintiff states the following claims for relief, consistently and alternatively:

FIRST CLAIM FOR RELIEF

Breach of Contract Against UNC and defendant Smith in his official capacity, for violation of the parties' non-disparagement provision

107. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

108. Plaintiff and defendant UNC, including defendant Smith in his official capacity, entered into the Severance Agreement and Release (Contract) on or about March 15, 2019, when the parties executed the Separation Agreement and Release.

109. The Contract includes a Non-Disparagement clause that provides:

The University agrees that it will not make negative or disparaging comments about the Chancellor in any way that adversely affects the Chancellor's reputation, character, and performance as Chancellor of ECU; and will not intentionally or knowingly make any false statements about the Chancellor... The University understands that the Chancellor will consider a breach of this provision to be a material breach that may invalidate the Agreement.

110. Subsequently, defendant UNC, and defendant Smith in his official capacity as Chair of the UNC-BOG, breached the Contract with plaintiff as follows:

- a. by publishing the Memorandum to the Search Committee of SFASU, as more fully described above; and
- b. by publishing the Dossier to the Search Committee of SFASU, as more fully described above.

111. As a proximate result of the breach of Contract by defendant UNC and defendant Smith, acting in his official capacity, plaintiff has sustained substantial damages in that he has continuously been denied employment in his field and has suffered a substantial loss of income and benefits, loss of professional reputation, loss of quality and enjoyment of life, and other damages to be proven at trial.

SECOND CLAIM FOR RELIEF

Defamation *Per Se* against defendant Smith in his individual capacity, and defendants Romary, and QVerity for the publication of the Memorandum

112. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

113. Defendants wrote, printed or caused the printing of the Memorandum.

114. Defendants published the Memorandum by sending it or causing it to be sent to third parties, specifically each member of the SFASU Search Committee.

115. The statements in the Memorandum, as described above, were false and defamatory, and impeached plaintiff in his trade or profession.

116. At the time of publication of the Memorandum, defendants knew the statements in the Memorandum were false.

117. Alternatively, at the time of publication of the Memorandum, defendants failed to exercise ordinary care in order to determine whether the statements in the Memorandum were false; or acted with reckless disregard of whether the statements were false.

118. Defendants published the Memorandum with actual malice.

119. The false and defamatory statements contained in the Memorandum concerned and directly targeted plaintiff in his trade and profession, as described herein. The statements defamed and libeled plaintiff, as intended by defendants.

120. Upon information and belief, defendants made oral statements, to the same effect as the defamatory statements included in the Memorandum, to SFASU and/or other prospective employers.

121. Defendant Smith, in his individual capacity; and, upon information and belief, defendants Romary, and QVerity each contributed to the drafting, publication, and/or the dissemination of the Memorandum.

122. The above acts proximately caused the destruction of plaintiff's career in higher education.

123. Plaintiff has suffered substantial damages, proximately caused by the above defendants as a result of the defamation of plaintiff through the Memorandum, including but not limited to, loss of income and benefits, loss of professional reputation, loss of quality and enjoyment of life, and other damages to be proven at trial.

124. The above defendants' acts, as described above, were deceptive, willful, wanton and malicious, and evinced an intentional or reckless indifference to and disregard for the rights of plaintiff. Aggravating factors that support an award of punitive damages are alleged above in ¶¶ 24-106. Accordingly, plaintiff is entitled to punitive damages in an amount to be determined by the jury in accordance with Chapter 1D of the North Carolina General Statutes.

THIRD CLAIM FOR RELIEF

Defamation *Per Quod* against defendant Smith in his individual capacity, and defendants Romary and QVerity for the publication of the Memorandum

125. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

126. Defendants wrote, printed or caused the printing of the Memorandum.

127. Defendants published the Memorandum by sending it or causing it to be sent to third parties, specifically each member of the SFASU Search Committee.

128. Statements in the Memorandum, as described above, were false and defamatory, and impeached plaintiff in his trade or profession.

129. At the time of publication of the Memorandum, defendants knew the statements in the Memorandum were false.

130. Alternatively, at the time of publication of the Memorandum, defendants failed to exercise ordinary care in order to determine whether the statements in the Memorandum were false; or acted with reckless disregard of whether the statements were false.

131. Defendants published the Memorandum with actual malice.

132. The false and defamatory statements contained in the Memorandum concerned and directly targeted plaintiff in his trade and profession, as described herein. The statements defamed and libeled plaintiff, as intended by defendants.

133. The false and defamatory statements contained in the Memorandum are defamatory when considered in connection with innuendo, colloquium, and the circumstances in which they were made, thus constituting libel *per quod*.

134. Upon information and belief, defendants made oral statements, to the same effect as the defamatory statements included in the Memorandum, to SFASU and/or other prospective employers.

135. Defendant Smith, in his individual capacity; and, upon information and belief, defendants Romary and QVerity each contributed to the drafting, publication, and/or the dissemination of the Memorandum.

136. The above acts proximately caused the destruction of plaintiff's career in higher education.

137. Plaintiff has suffered substantial damages, proximately caused by the above defendants as a result of the defamation of plaintiff through the Memorandum, including but not limited to,

loss of income and benefits, loss of professional reputation, loss of quality and enjoyment of life, and other damages to be proven at trial.

138. The above defendants' acts, as described above, were deceptive, willful, wanton and malicious, and evinced an intentional or reckless indifference to and disregard for the rights of plaintiff. Aggravating factors that support an award of punitive damages are alleged above in ¶¶ 24-106. Accordingly, plaintiff is entitled to punitive damages in an amount to be determined by the jury in accordance with Chapter 1D of the North Carolina General Statutes.

FOURTH CLAIM FOR RELIEF

Defamation *Per Se* against defendant Smith in his individual capacity, and defendants Romary and QVerity for the publication of the Dossier

139. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

140. Defendants wrote, printed or caused the printing of the Dossier.

141. Defendants published the Dossier by sending it or causing it to be sent to third parties, specifically each member of the SFASU Search Committee.

142. Statements in the Dossier, as described above, were false and defamatory, and impeached plaintiff in his trade or profession.

143. At the time of publication of the Dossier, defendants knew the statements in the Dossier were false.

144. Alternatively, at the time of publication of the Dossier, defendants failed to exercise ordinary care in order to determine whether the statements in the Memorandum were false; or acted with reckless disregard of whether the statements were false.

145. Defendants published the Dossier with actual malice.

146. The false and defamatory statements contained in the Dossier concerned and directly targeted plaintiff in his trade and profession, as described herein. The statements defamed and libeled plaintiff, as intended by defendants.

147. Upon information and belief, defendants made oral statements, to the same effect as the defamatory statements included in the Dossier, to SFASU and/or other prospective employers.

148. Defendant Smith, in his individual capacity; and, upon information and belief, defendants Romary and QVerity each contributed to the drafting, publication, and/or the dissemination of the Memorandum.

149. The above acts proximately caused the destruction of plaintiff's career in higher education.

150. Plaintiff has suffered substantial damages proximately, caused by the above defendants as a result of the defamation of plaintiff through the Dossier, including but not limited to, loss of income and benefits, loss of professional reputation, loss of quality and enjoyment of life, and other damages to be proven at trial.

151. The above defendants' acts, as described above, were deceptive, willful, wanton and malicious, and evinced an intentional or reckless indifference to and disregard for the rights of plaintiff. Aggravating factors that support an award of punitive damages are alleged above in ¶¶ 24-106. Accordingly, plaintiff is entitled to punitive damages in an amount to be determined by the jury in accordance with Chapter 1D of the North Carolina General Statutes.

FIFTH CLAIM FOR RELIEF

Defamation *Per Quod* against defendant Smith in his individual capacity, and defendants Romary and QVerity for the publication of the Dossier

152. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

153. Defendants wrote, printed or caused the printing of the Dossier.

154. Defendants published the Dossier by sending it or causing it to be sent to third parties, specifically each member of the SFASU Search Committee.

155. Statements in the Dossier, as described above, were false and defamatory, and impeached plaintiff in his trade or profession.

156. At the time of publication of the Memorandum, defendants knew the statements in the Dossier were false.

157. Alternatively, at the time of publication of the Memorandum, defendants failed to exercise ordinary care in order to determine whether the statements in the Dossier were false; or acted with reckless disregard of whether the statements were false.

158. Defendants published the Dossier with actual malice.

159. The false and defamatory statements contained in the Dossier concerned and directly targeted plaintiff in his trade and profession, as described herein. The statements defamed and libeled plaintiff, as intended by defendants.

160. The false and defamatory statements contained in the Dossier are defamatory when considered in connection with innuendo, colloquium, and the circumstances in which they were made, thus constituting libel *per quod*.

161. Upon information and belief, defendants made oral statements, to the same effect as the defamatory statements included in the Dossier, to SFASU and/or other prospective employers.

162. Defendant Smith, in his individual capacity; and, upon information and belief, defendants Romary and QVerity each contributed to the drafting, publication, and/or the dissemination of the Memorandum.

163. Plaintiff has suffered substantial damages, proximately caused by the above defendants as a result of the defamation of plaintiff through the Dossier, including but not limited to, loss of income and benefits, loss of professional reputation, loss of quality and enjoyment of life, and other damages to be proven at trial.

164. The above defendants' acts, as described above, were deceptive, willful, wanton and malicious, and evinced an intentional or reckless indifference to and disregard for the rights of plaintiff. Aggravating factors that support an award of punitive damages are alleged above in ¶¶ 24-106. Accordingly, plaintiff is entitled to punitive damages in an amount to be determined by the jury in accordance with Chapter 1D of the North Carolina General Statutes.

SIXTH CLAIM FOR RELIEF

Interference with Contract and Business Relationships Against defendant Smith in his individual capacity, and defendants Romary and QVerity

165. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

166. As described above, plaintiff was a top contender to secure the position of Chancellor of SFASU.

167. Defendants wrote, printed or caused the printing of the Memorandum and Dossier.

168. Defendants published the Memorandum and Dossier by sending it or causing it to be sent to third parties, specifically each member of the SFASU Search Committee.

169. Statements in the Memorandum and Dossier, as described above, were false and defamatory, and impeached plaintiff in his trade or profession.

170. At the time of publication of the Memorandum and Dossier, defendants knew the statements in the Memorandum and Dossier were false and/or failed to exercise ordinary care in order to determine whether the statements in the Memorandum and Dossier were false, and/or or acted with reckless disregard of whether the statements were false.

171. Defendants published the Memorandum and Dossier with actual malice.

172. Defendants knew of plaintiff's progression in the SFASU search process, knew of the likelihood of his selection for the position, and knew its false reports—as alleged above—would likely result in his disqualification as a candidate.

173. But for defendants' actions, plaintiff would have been selected as President of SFASU.

174. Additionally, at the time the statements were made, defendants knew that plaintiff intended to seek employment with other institutions.

175. Nevertheless, through its false statements in the Memorandum and Dossier sent to the SFASU Search Committee, defendants intentionally and/or recklessly took action which induced the Search Committee to eliminate plaintiff from consideration.

176. Additionally, through the above actions, defendants have maliciously, and without justification, interfered with plaintiff's right to seek employment elsewhere in his field.

177. In its above acts, defendants acted with malice and without justification.

178. Defendant Smith, in his individual capacity; and defendants Romary and QVerity each contributed to the drafting, publication, and/or the dissemination of the Memorandum and Dossier.

179. As a direct and proximate result of the malicious interference with contract by the above defendants, as set forth above, plaintiff has suffered substantial damages, including but not limited to loss of income and benefits, loss of professional reputation, loss of quality and enjoyment of life, and other damages to be proven at trial.

180. The above defendants' acts, as described above, were deceptive, willful, wanton and malicious, and evinced an intentional or reckless indifference to and disregard for the rights of plaintiff. Aggravating factors that support an award of punitive damages are alleged above in ¶¶ 24-106. Accordingly, plaintiff is entitled to punitive damages in an amount to be determined by the jury in accordance with Chapter 1D of the North Carolina General Statutes.

SIXTH CLAIM FOR RELIEF

Unfair or Deceptive Acts or Practices Against defendant Smith in his individual capacity, and defendants Romary and QVerity

181. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

182. The defamation and interference with plaintiff's employment opportunities, and other actions alleged herein, were false and deceptive and were committed in commerce or affected commerce.

183. The actions of defendants, as alleged, constitute unfair or deceptive trade practices, in violation of N.C.G.S. § 75- 1.1.

184. Defendant Smith, in his individual capacity; and defendants Romary and QVerity each contributed to the drafting, publication, and/or the dissemination of the Memorandum and Dossier, which were false and defamatory and intended to deceive prospective employers of plaintiff.

185. As a proximate result of the above defendants' actions in this regard, plaintiff has sustained substantial damages in that he has continuously been denied employment as a result of

defendants' statements, and, has suffered a loss of income and benefits, loss of professional reputation, loss of quality and enjoyment of life, and other damages to be proven at trial.

186. Plaintiff is entitled to treble damages and attorneys' fees pursuant to N.C.G.S. §§ 75-16 and 16.1.

EIGHTH CLAIM FOR RELIEF

Breach of Contract Against UNC and defendant Smith in his official capacity, for disclosure of confidential personnel information

187. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

188. Plaintiff and defendant UNC, including defendant Smith in his official capacity, entered into a binding Contract on or about March 15, 2019, when the parties executed the Separation Agreement and Release.

189. The Contract includes a Public Statement and Non-Disparagement provision that provides:

The University will observe the confidentiality of personnel information as required by G.S. 126-22, and will advise the Board of Governors and the ECU Board of Trustees of the requirements of that provision. The University understands that the Chancellor will consider a breach of this provision to be a material breach that may invalidate the Agreement.

190. Subsequently, in or about April, 2019, as alleged above, defendant UNC, and defendant Smith in his official capacity as Chair of the UNC-BOG, breached the Contract with plaintiff by releasing and disclosing or facilitating the disclosure of the Spellings Letter, confidential personnel information, that was excerpted in *Business North Carolina* magazine.

191. As a proximate result of defendant UNC's breach of Contract in the above acts, plaintiff has sustained a substantial loss of income and benefits, loss of professional reputation, loss of quality and enjoyment of life, and other damages to be proven at trial.

TENTH CLAIM FOR RELIEF

Violation of N.C.G.S. § 126-22(a), North Carolina Human Resources Act Against defendants UNC and Smith, in his official capacity

192. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

193. The North Carolina Human Resources Act, N.C.G.S. § 126-22(a), prohibits the disclosure of State employee personnel documents and information unless subject to an exception contained in N.C.G.S. § 126-23 and N.C.G.S. § 126-24.

194. From July 1, 2016 to June 30, 2019 plaintiff was a State employee as defined in N.C.G.S. § 126-22(b).

195. Defendant UNC, including defendant Smith in his official capacity, is a State entity and custodian of personnel files and thus bound by N.C.G.S. § 126-22(a).

196. A personnel file means and includes any employment-related information, including information related to an individual's application, selection, promotion, demotion, transfer, leave, salary, contract for employment, benefits, suspension, performance evaluation, disciplinary actions, and termination.

197. Defendant UNC, including defendant Smith in his official capacity, breached its duty to plaintiff under N.C.G.S. § 126-22(a) by releasing, disclosing, or allowing an unauthorized individual to inspect and examine plaintiff's confidential personnel information, the Spellings Letter, a personnel document that was not subject to any exception for disclosure.

198. As a proximate result of the above defendants' breach, plaintiff has sustained substantial damages, loss of professional reputation, loss of quality and enjoyment of life, and other damages to be proven at trial.

199. Plaintiff is entitled to recover these damage amounts from the above defendants.

REQUEST FOR RELIEF

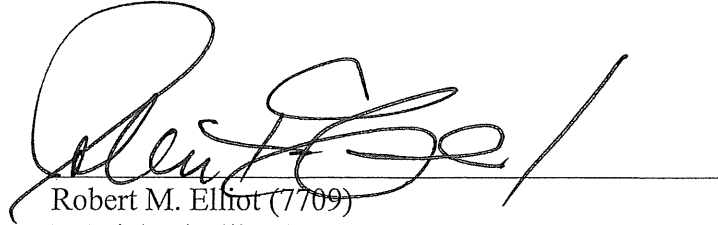
WHEREFORE, plaintiff requests the following relief:

- A. That he recover compensatory damages against all defendants, jointly and severally, in an amount in excess of \$ 25,000;
- B. That he recover punitive damages against defendants Smith in his individual capacity, Romary, and QVerity, jointly and severally, in an amount in the discretion of the jury;
- C. That he be awarded treble damages, attorneys' fees and costs pursuant to the provisions of N.C.G.S. §§ 75-16 and 75-16.1;
- D. That he be awarded pre-trial and post-judgment interest on all amounts awarded herein;
- E. That he be awarded the costs of this action; and
- F. That he be granted further relief as the court deems just and proper.

PLAINTIFF'S DEMAND FOR A JURY TRIAL

Pursuant to Rule 38(b) of the North Carolina Rules of Civil Procedure, plaintiff hereby demands a trial by jury on all issues presented herein.

This the 12th day of June, 2020.

A handwritten signature in black ink, appearing to read "R. Michael Elliot", is written over a horizontal line. The signature is stylized and cursive.

Robert M. Elliot (7709)
R. Michael Elliot (42806)
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EXHIBIT A

TO: S,F.A.S.U. Board of Regents

FROM: UNC System Board of Governor

DATE: June 12, 2019

SUBJECT: Cecil Stanton, Former ECU (UNC System) Chancellor

I write to each of you today with the upmost respect for the process that you are going through in selecting your next leader (President). I have personally been involved in several of them here in the University of North Carolina System. I have contemplated whether or not to send this letter and documentation. However, I feel that I have a sense of obligation as a fellow regent to share "truth" so that you can make an informed decision about one of your applicant's and finalists. Mr. Cecil Stanton (former ECU Chancellor), called me last week and asked if he could use me as a regent reference for several positions of leadership he was seeking across the country. He went on to tell me that he was advancing to the finalist stage at SFASU, and that he had collected state political support, including the endorsement of the search consulting firm. He was very confident that he was going to be offered the position and that he had already starting preparing his transition plans. One concerning comment he made was that he is looking to "land back on his feet", and will take whatever he gets at this point. He said his wife had no interest in moving to "Nowhere Texas" and he had promised her it would only be for a short period until they could return to their home state of Georgia. I pause out of great concern for you and your university with those types of comments.

I personally liked Cecil during his days at ECU and convinced myself he was doing a good job. However, after his resignation/departure and the uncovering of financial activities, I realized he really has left things in poor condition. I want to list a few items of concern that led to his dismissal (BTW - he was asked to resign by all but one of our Board of Governor's):

- The faculty was positioning for a vote of no-confidence in Cecil that would have occurred before the winter break. Our Chairman asked the vote be delayed until a full evaluation from our BOG would and could take place. We knew this would have hurt our chances of landing a quality applicant pool during our own search. Cecil then agreed to resign, if he could finish the academic year through commencement. We settled on a severance package that exceeded \$875,000 including vacation pay-out days, unused comp, health coverage, and a transition living stipend.
- Mishandling of the ECU budget and athletic funds. Upon his arrival the university had operated in the black for many years. After his second year as chancellor, ECU had a negative operating budget of over \$64 million dollars and asked the state for additional funds to bail them out. ECU lost

enrollment during both years of his leadership - leading to a loss of tuition revenue and the expenses increases.

- The funds from the consulting firm that helped place Cecil returned the money after a public outcry of his hiring. He was never a good fit because he is not an educator. He is a smooth talking politician that had connections with System President Spellings, who made the final recommendation and hire. We learned after his start date that he had not represented the truth in his resume. Many of his current jobs were part-time. His job status in Georgia was always centered around appointments from the Governor.
- The UNC system lost a legal suit from a student in which Cecil illegally censored a young woman from any and all ECU social media sites. He gave direct orders to media management to censor the student and "dis-align" her from any ECU activities. The law suit ultimately cost the UNC system over \$500,000 dollars.
- The purchase of a \$1.65 million chancellor's house. The move was a crucial blow with faculty/staff confidence in him as a prudent budget manager. He operated the budget and campus as if it were a political campaign and it proved to be costly.
- Personnel: Cecil simply did not and does not have the background to run a higher education institution. He made many missteps in hiring and firing during his two years. Just google search the number of AD's, Head Coaches, and Administrative controversies surrounding his management. He is a micro-managing leader that does not include others in decision making. Valdosta State University had warned UNC officials about his "quick and rash" personnel decisions and did not advance him in their pool of presidential candidates. We should have been concerned when they did not hire him in his own system and not invited back anytime soon.
- He simply did not involve himself in the community and was consistently searching for his next big role. We now have learned that within his first year he applied for two presidential/chancellor positions at larger university systems. Many local leaders complained about his "Oxford Arrogance" mentality and he would never try to gather community buy-in. I often spoke to him about this but it never seemed to resonate.

I have attached a few copies of public search documents that you can review and determine for yourself if he is the right fit. We mutually signed a separation agreement with Cecil that does not allow either party to publicly disparage the other, so I must maintain confidentiality. However, the information I have shared is mostly public knowledge and widely covered. I simply felt obligated to share this information with you and wish you much success in hiring your next president. Hopefully we both find the right individuals to lead our universities forward and beyond all the controversy. -UNC RR-

EXHIBIT B

WAS THE HIRE OF ECU *CHANCELLOR CECIL STATON* AN ACT OF GROSS NEGLIGENCE?

The Current Situation

At ECU (the university formerly known as East Carolina), university stakeholders face unrest, disappointment, and pessimism as they question several leadership decisions made in recent years. The growing concerns reached a tipping point as the ECU football team, a key aspect of Pirate culture and university pride, continues to suffer unbearable losses amidst questionable decisions from the Athletic Director, Jeff Compher. Stakeholders have begun to speak out publicly asking for the removal of Jeff Compher and the football head coach, Scottie Montgomery. Some went so far as to fly a banner over the Dowdy-Ficklen Stadium at the last home game which read simply, "Fire Compher. Go Pirates!"

The plight of ECU athletics is made all the more frustrating because Compher was awarded a significant raise (\$70,000) and a five-year contract extension earlier in 2017. This, despite running a budget deficit in athletics and other errors in athletic leadership. Consequently, the Compher and ECU Athletics issues are intertwined with questions about the university leadership, specifically Chancellor Cecil P. Staton.

Staton Joins ECU

Chancellor Cecil Staton began his role as the 11th chancellor of East Carolina University on July 1, 2016.

Staton was recommended to the Board of Trustees and then to Margaret Spellings, who put forth Staton as her singular recommendation to the UNC Board of Governors. Staton was presumably one of 3 finalists for the position. I say presumably because, though candidates for university leadership positions typically make presentations for the university community prior to the final selection, the finalists were not announced to ECU stakeholders nor to the public. Staton, like Spellings, is a politician.

Staton's rise to the role of chancellor, and its accompanying salary, may surprise readers. Upon joining ECU in July 2016, Staton was awarded an annual salary of \$450,000.¹ The figure was a whopping \$65,000 more than previous Chancellor, Steve Ballard earned for the same position. What's more, the figure represented a career-high for Staton, who was paid \$290,472.00 in his most recent position at Valdosta State University in 2016 (according to open.georgia.gov which provides salary data for Georgia state employees). That too was a stunning increase over Staton's salary as a Vice-Chancellor in 2015, for which he was paid \$165,000.

What's more, Staton was chosen despite questionable qualifications in his experience and actions of questionable ethical integrity.

While there was a search at ECU (facilitated by consulting firm Witt/Kieffer), keep in mind that the ultimate recommendation made to the Board of Governors by Margaret Spellings, a politician herself, was one name and one name only – Cecil Staton.ⁱⁱⁱ And, let's not forget that Staton's good friend Henry Hinton was a member of the search committee, as was Athletic Director Jeff Compher.

Staton's Experience

Staton's biography points out many accolades including a doctorate earned from the University of Oxford, a business career in broadcast and publishing, several years in the Georgia Senate, and years as an academic and Associate Provost at Mercer University in Macon, Georgia. The biography, Staton's curriculum vita (see appendix), and endorsements for Staton fail to depict the true picture of Staton's experience in business and higher education.

1. Associate Provost, Associate Professor, and University Publisher, Mercer University, 1991-2003.

When one familiar with higher education sees the title, provost, the title triggers certain assumptions about the role. Provosts are in leadership positions and rose to the position over time to bring experience and knowledge to the role. What some don't realize is that Associate Provost (like Vice-Chancellor) roles exist across a university, representing the major units such as academic affairs, student affairs, finance, research, health sciences, community engagement, and so on. Reading Staton's biography or the many statements about his experience, his role at Mercer University is always in summary form – 12 years at Mercer University as Associate Provost, Associate Professor, and University Publisher. The summary is sufficiently vague as to leave the interpretation of the nature and extent of the work experience to the reader. However, the description of the role on Staton's curriculum vita reveals that the title of Associate Provost was his title for leading the Mercer University Press.

Further, while Staton's title may have grown in stature over his time at Mercer University, the role itself may not have. In the book, *The Struggle for the Soul of the SBC*, the chapter entitled The History of Smyth & Helwys Publishing (contributed by Staton), Staton explained that Mercer University Press sought out a collaboration and partnership with Smyth & Helwys.^{iv} Smyth & Helwys (created in December 1990) would relocate to the offices of Mercer University Press and Staton would serve as full-time publisher for both organizations. Smyth & Helwys' managing editor would also work for both organizations, while Staton's wife would remain the business manager for Smyth & Helwys. The agreement took effect September 1991.

The titles suggest a range of experience that is not supported by the facts of the position.

Staton's time at Mercer University also references a role as Associate Professor. This too suggests to one familiar with higher education a level of accomplishment as a scholar. Associate professors typically have been promoted and tenured from the rank of assistant professor, following a review of scholarly, teaching, and service contributions. Of these, scholarship is weighted most heavily in promotion and tenure decisions. Academic scholarship is vetted using a blind peer-review system such that scholarly work/research accepted for publication passed through multiple reviews by peer experts unbiased by knowledge of the author's

identity. Staton's curriculum vita lists publications (see appendix), but they do not meet the criteria for academic scholarship. Why? All but two of the publications are published by Staton's publishing houses -- Mercer University Press or Smyth & Helwys. That's right -- he published his own work! Of those, Staton served primarily in the role of editor, authoring only a chapter. Such limited experience producing academic scholarship would be unlikely to result in promotion and tenure. More disturbing though is whether someone with so little understanding and experience in academic scholarship and the publication process is fit to run an institution of higher education within which the production and dissemination of scholarship is paramount.

2. Business Experience -- Smyth & Helwys Publishing, Stroud & Hall Publishers, Staton Broadcasting/Georgia Eagle Media

Staton is also praised as an entrepreneur with business success founding multiple businesses in publishing and broadcasting. What we know, however, is that these businesses were those of opportunity created from Staton's network of Baptist leaders and facilitated by the help of Mercer University Press, which provided free rent to Smyth & Helwys. Aside from this, two important facts stand out.

- a. Staton's curriculum vita provides his dates of "employment" with all three of his organizations. Note the overlap in timing with other responsibilities for Mercer University and the State of Georgia. Clearly, none of these roles were full-time endeavors. This pattern began during Staton's first employment with Brewton-Parker College during which he also served as the full-time pastor for Higgston Baptist Church.

Organization	Brewton-Parker College	Higgston Baptist Church	Mercer University Press	Smyth & Helwys	Georgia Eagle Media	Stroud & Hall	Georgia Senate	Vice-Chancellor, Georgia University System	Interim - President, Valdosta State
Start	1989	1989	1991	1990	2001	2004	2004	2014	2015
End	1991	1991	2003	2013	2013	2013	2014	2015	2016

Clearly in 2014, Staton set his eye towards leadership in higher education, but it isn't clear whether his work at his companies has ended. Smyth & Helwys and Stroud & Hall (both privately owned companies) remain in business and operate from the same physical address (6316 Peake Road, Macon GA). Georgia Eagle Media was sold in August of 2014.

- b. Staton was sued by Georgia Southern University for failure to pay monies due for a contract between Georgia Eagle Media and GSU to broadcast GSU football games. Georgia Southern University sued and eventually secured part of the owed monies. Willingly abdicating the obligation to pay according to an agreed upon contract to the extent that the university was forced to sue is disturbing in and of itself. But Staton's correspondence related to why he chose not to pay until forced by the lawsuit is even more disturbing (see appendix). It suggests that Georgia Eagle Media was in financial straits -- an indicator that Staton's business experience is not the shining asset presented by Spellings and the Board of Trustees.

Are you now wondering, why then would Valdosta State University hire Staton in the role of Interim President? The answer is simple – **no search was conducted** for the position. Staton was a political appointee appointed by University of Georgia system chancellor, Hank Huckabee. The role immediately prior, Vice Chancellor for Extended Education in the Georgia University System, was also a Huckabee appointment. Let's take a look at Staton's Valdosta story below.

Valdosta State University – Financial Crises, Faculty Lay-Offs, & America's Next Great College Town, 2015-2016

In an announcement of Staton's role as incoming ECU Chancellor, Boyd (2016) noted that Staton was able to successfully face declining enrollments at Valdosta State University.^v Unfortunately, the statement didn't tell the whole story about Staton's time at Valdosta State. In fact, during Staton's time as Interim President (a post he secured by appointment from University of Georgia Chancellor, Hank Huckabee for which Staton earned just over \$290,000 annually), Valdosta State University laid off 33 staff and tenure-track faculty members citing poor enrollments. Then interim president Cecil P. Staton said the school expected a shortfall in the 2016-17 year of \$1 million in tuition revenue and an additional \$2.4 million in enrollment-related state funding.^{vi} Because there were significant donations to Valdosta State in the same time period, faculty questioned whether VSU truly faced a financial exigency, necessary to justify the elimination of tenured and tenure-track faculty.

Curious about Staton's vision for Valdosta State University? It might sound familiar to you. In a speech in which he admonished students and community for failing to attend the VSU's home football games, Staton called for Valdosta to become America's next great college town.^{vii}

During Staton's tenure at Valdosta State University, a lawsuit brought by a former VSU student, Thomas Hayden Barnes, on grounds of free-speech impairment was settled to the tune of \$900,000.^{viii} Does free speech ring a bell? It should. You might recall that in Staton's first year as ECU Chancellor, some members of the Marching Pirates kneeled during the National Anthem. Staton issued a statement valuing the students' right to free speech. Later, investigative reporters with WITN obtained emails from the week prior to the October 1, 2016 protest and learned that Staton and other ECU administrators were aware of the planned protest and approved it.^{ix} Perhaps the costly settlement at VSU predisposed Staton to first amendment issues.

From Georgia Senate to University of Georgia System, 2014-2015

What's a Georgia Senator to do without a senate seat? For Staton, the answer was provided by University of Georgia Chancellor Hank Huckabee, who appointed Staton to the role of Vice-Chancellor for Extended Education for the University of Georgia System in May 2014.^x This position was quite the coo for Staton in

that it was allegedly created specifically for him at an annual salary of \$165,000.^{xi} Perhaps Staton was well-qualified given that his Senate responsibilities included the Senate Appropriations Higher Education sub-committee. His company, Georgia Eagle Media, also earned revenues associated with contracts with University of Georgia member institutions – some of which were allegedly not disclosed as required.

The Georgia Senate Years and Beth Merkelson, 2004-2014

Staton's last term in the Georgia Senate ended in 2014, after a near loss in 2012, against opponent Spencer Price. The win was surprising and not just because of the narrow margin of only 204 votes.^{xii} After the Beth Merkelson email scandal of 2012, and kindness of the Senate ethics committee, the assumption was that Staton would fade away. But with less than a 1% margin (counted by whom?), his opponent chose not to pursue a recount.

Are you wondering about the Beth Merkelson scandal? Ah, well yes, let's fill you in.

In 2011, Staton allegedly used an anonymous email address and a fake name (Beth Merkelson) to bombard lawmakers with attacks about Republican Georgia Lt. Gov. Casey Cagle.^{xiii} Reports surfaced that the emails' author, "Beth Merklson," could not be located or even verified. Arch Adams, a political hobbyist, corresponded with Beth and was surprised to see a reply email from Beth signed Cecil Staton. Concluding that Senator Staton may be behind the Merkelson emails, Adams then set up two websites. Grassrootsfrenzy.com was put in place to entice a click from Beth, while DumpCecil.com was in place for Staton. Within 19 minutes, both parties clicked on the respective links and each originated from the same IP address. What's more – that IP address originated from none other than Staton's business, Smyth & Helwys Publishing. And Georgia records showed no Beth or Elizabeth Merkelson ever in the history of state records. Read Adams' full report in the appendix.^{xiv} The report was to be considered by the Georgia Senate Ethics Committee... but apparently wasn't. Friends in high places?^{xv} Days later, Staton denied the accusations but stepped down from his top party position as Majority Whip for the remainder of the legislative session.

Was this Staton's only foray into unethical behavior? While Merkelson may have been designed to create problems for his political opponents, Staton has also used his political station for financial gain – and to the detriment of universities. Remember, Staton's broadcasting company, Georgia Eagle Media, had a contract with Georgia Southern University football to broadcast games and to share profits. Georgia Southern University sued for non-payment claiming \$52,000 was owed.^{xvi} Eventually Staton paid up.^{xvii}

According to news reports, Staton moved millions in taxpayer dollars to Mercer University, the private university that employed him. He authored a voter ID bill and was known for pushing police crackdowns on immigrants.^{xviii}

Those may not be the issues of greatest concern to students of East Carolina University. Staton's views on tolerance are likely more relevant. In Staton's campaigns for Senate, he reportedly sold himself as a "minister and a man of faith" fighting to keep clandestine "supporters of homosexuals" out of Congress.^{xix} Staton ran as

a conservative with endorsements from the far right and maintained he would not support special statuses for homosexuals.^{xx}

Other Points of Concern

Surely, this is enough to show that Cecil Staton has neither the experience to lead ECU nor the integrity to do so. But there are two more points to share.

In 2002 Staton was in a car accident in a car owned by his company. The insurance policy on the car awarded \$100,000 in benefits but Staton attempted to "stack" the benefits from all of the automotive insurance policies on the company's cars. Stacking the insurance policies of the three company cars would have resulted in a payout to him of \$300,000 instead of \$100,000. The case went all the way to the Georgia Supreme Court and Staton lost. Stacking is not allowed. See *Staton v. State Farm Auto. Ins. Co.*, 294 Ga. App. 208 (669 SE2d 164) (2008) How's that for ethics? 100k isn't enough so I'd like to use all 3 of my cars' insurance policies... oh and they aren't mine, but "my company."

Lastly, little is made of Staton's role as an ordained minister. He is typically presented as an academic who studies religion. But Staton is a minister and worked for two years as the pastor for Higgston Baptist Church (January 22, 1989-1991).^{xxd} Of concern also is that this work experience is not presented in Staton's curriculum vita or in his biography. Higgston was not Staton's only experience in church leadership. In 1997, he and his wife left First Baptist Church of Macon and started a new church, Providence Baptist Church (for which Catherine Staton was named a financial agent on incorporation records). Providence Baptist is now defunct.

Summary

What we now must ask is how could someone with this past be chosen to lead East Carolina University? Did the search consulting firm, the search committee, the Board of Trustees, Margaret Spellings, and the Board of Governors overlook these facts? Or did they choose to ignore them or deem them irrelevant? Of the 70 applicants, did none come with more integrity, less baggage, and more actual experience in higher education?

And given that Jeff Compher was on the search committee that recommended Staton and has since received a substantial raise and contract extension despite poor performance, was there an arrangement among key players in exchange for Staton's selection?

Regardless of why or how, this is a case of gross negligence. Those with fiduciary responsibility for East Carolina University failed to perform due diligence in their vetting of applicants for the role of Chancellor. ECU is paying the price for this negligence, but amends must be made.

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- ⁱⁱ Ibid.
- ⁱⁱⁱ Boyd, J. (April 27, 2016). UNC Board of Governors selects Dr. Cecil Staton as new ECU chancellor, *WCTI Channel 12*, Available <http://www.wcti12.com/news/unc-board-of-governors-selects-dr-cecil-staton-as-new-ecu-chancellor-1/16006664>
- ^{iv} Staton, C. (1993). The history of Smyth & Helwys Publishing, (pg 224-240) in Walter Shurden (ed.) *The Struggle for the Soul of the SBC*, Mercer University Press.
- ^v Boyd, D. (April 27, 2016). 'An exciting time' - Board of Governors names Cecil Staton as chancellor, *ECU News Services*, Available <http://www.ecu.edu/cs-admin/news/Board-of-Governors-names-Cecil-Staton-as-chancellor.cfm>
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- ^{ix} *WITN* (October 28, 2016). EMAILS: ECU administrators knew of possible band protest beforehand, Available <http://www.witn.com/content/news/EMAILS--Top-ECU-administrator-knew-of-possible-band-protest-beforehand-399076761.html>
- ^x 13wMAZ.com Web Staff, (May 23, 2014), Staton tapped for new role with University System, Available <http://warnerrobins.13wmaz.com/news/news/247562-staton-tapped-new-role-university-system>
- ^{xi} Walls, J. (May 22, 2014). Staton lands \$165K gig with Board of Regents, *Atlanta Unfiltered*, Available <http://atlantaunfiltered.com/2014/05/22/staton-lands-165k-gig-with-board-of-regents/#.Wcp5GMh942w>
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- ^{xiii} Ball, B. (May 16, 2016) ECU chancellor-elect brings complicated, political past to new role, *NC Policy Watch*, <http://www.ncpolicywatch.com/2016/05/16/ecus-chancellor-elect-brings-complicated-political-past-to-new-role/>
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^{xxd} History of the Higgston Baptist Church, 1896-1996, Foreword, Available <http://www.higgstonbaptistchurch.org/history.php>